

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No. CR 05-1202-R
	)	
Plaintiff,	)	
	)	ORDER GRANTING DEFENDANT'S
v.	)	MOTION TO DISMISS FOR
	)	LACK OF JURISDICTION
TAKIA LYNNEA CAMPBELL,	)	
	)	
Defendant.	)	

I.

INTRODUCTION

Before the Court is Defendant's motion to dismiss the petition to revoke supervised release on the ground that the Court lacks jurisdiction over the petition because 1) the warrant for Defendant's arrest was issued after the term of supervised release had ended, and 2) the petition, which contained the application for the warrant, was not properly sworn to. For the reasons set forth below, the motion is GRANTED.

## II.

## SUMMARY OF FACTS AND PROCEEDINGS

In 1995, Defendant was convicted in federal court in Texas of drug trafficking and carrying a firearm in furtherance of drug trafficking and sentenced to 138 months in prison, followed by a four-year term of supervised release. Defendant was incarcerated at the Federal Correctional Institute ("FCI") in Taft, California. In June 2003, Defendant was transferred by the Federal Bureau of Prisons ("BOP") from FCI Taft to Cornell Community Corrections Center ("Cornell"). On January 27, 2004, Defendant was released from Cornell and formally placed on supervised release. In December 2005, his supervision was transferred from Texas to the Central District of California. His case was assigned to Judge Real. On March 26, 2006, Judge Real revoked Defendant's supervision for violating the terms and conditions of his release and remanded Defendant to custody for six months. Judge Real also readmitted Defendant to the previously imposed supervised release term. In September 2006, Defendant completed the custody portion of Judge Real's order and was placed back on supervised release.

According to the government, Defendant failed to comply with the terms and conditions of supervised release following his release. On January 9, 2008, U.S. Probation Officer Gregory J. Metoyer, Defendant's probation officer, submitted a petition for revocation and a request for an arrest warrant. The petition contained a signature block in which Metoyer purportedly declared under penalty of perjury that the allegations contained therein were true and correct, but it was not signed by him. Instead, Metoyer's supervisor signed for Metoyer. On January 14, 2008, Judge Real issued a bench warrant for

1 Defendant's arrest. On January 31, 2008, Defendant was arrested on  
2 the warrant.

3 II.

4 DISCUSSION

5 A. Defendant's Supervised Release Term Did Not Begin To Run Until He  
6 Was Released From The Community Corrections Facility

7 Defendant contends that his four-year supervised release term  
8 began on June 24, 2003, when he was transferred from FCI Taft to  
9 Cornell and that it expired on June 24, 2007. He argues that, as a  
10 result, Judge Real did not have authority to issue a bench warrant in  
11 January 2008 after his supervised release term had ended. Though the  
12 law is not entirely clear on this issue, the Court concludes that  
13 Defendant's term of imprisonment did not end until he was released  
14 from Cornell and, therefore, his supervised release term did not begin  
15 until then. As a result, the four-year term began on January 27,  
16 2004, and ended on January 26, 2008. Thus, the district court had  
17 jurisdiction to issue a warrant for supervised release violations on  
18 January 14, 2008.

19 There is very little law on this issue. Defendant cites *United*  
20 *States v. Sullivan*, 504 F.3d 969 (9th Cir. 2007), for the proposition  
21 that release to a half-way house constitutes release from  
22 imprisonment, ending the prison term and beginning the supervised  
23 release term. *Sullivan*, however, is not directly on point. The  
24 defendant in *Sullivan* was released from state custody after serving a  
25 concurrent state and federal term in state prison and placed in a  
26 state pre-release center for six months. The Ninth Circuit concluded  
27 that the state did not consider confinement in the pre-release center  
28 as imprisonment and, therefore, the defendant had been released from

1 prison when he was placed in the pre-release center. *Id.* at 972 ("The  
2 features and goals of Pre-Release Centers in Montana and elsewhere are  
3 different from imprisonment, and instead are much more similar to  
4 those of federal supervised release.").

5 The government argues that the federal system is different. BOP  
6 is required by statute to place federal prisoners in a community  
7 correctional center for the last six months of their sentence, but  
8 that placement is under the auspices and the supervision of the BOP,  
9 not the Probation Department of the Court. As the government points  
10 out, if a prisoner violates the rules of the community correctional  
11 center, he is not haled before the Court. Instead, he is dealt with  
12 by BOP or the community correctional center.<sup>1</sup>

13 Defendant also points to a November 2007 decision by Judge Wilson  
14 in a similar case on similar facts in which, according to Defendant,  
15 Judge Wilson found that release from a federal prison and placement in  
16 a correctional community center signals the end of the prison term and  
17 the beginning of supervised release. *See United States v. Giddens*,  
18 No. CR 04-52-SVW (C.D. Cal.). Though the Court would certainly  
19 consider Judge Wilson's analysis as guidance in this case, Judge  
20 Wilson dismissed the case in a four-sentence order that does not  
21 explain the reasoning behind his decision. Thus, there is nothing in  
22 *Giddens* for the Court to rely on.

---

23  
24  
25 <sup>1</sup> The probation officer testified during the preliminary hearing  
26 that, typically, a probation officer is assigned to a releasee when  
27 the releasee is transferred from prison to the community corrections  
28 facility. He further testified that, in a situation where a releasee  
fails to follow the rules, he is dealt with by the community  
corrections facility or the BOP, not the Court.

1 The government points to a district court case out of Idaho in  
2 which the district judge there rejected the defendant's argument that  
3 release from federal prison to a county jail work release program  
4 triggered the end of the prison term and the beginning of supervised  
5 release. See *United States v. Miller*, 2007 WL 4261929 (D. Id. 2007).  
6 Defendant argues that it is an unpublished case and not binding on  
7 this Court. The Court agrees that it is unpublished--as is *Giddens*--  
8 and not binding, but the reasoning applied by the district judge in  
9 that case is certainly persuasive.

10 Ultimately, the Court concludes that the BOP's practice of  
11 releasing prisoners to a community correctional facility or half-way  
12 house six months before a prison term ends is not tantamount to the  
13 termination of the prison term and the beginning of supervised  
14 release. Instead, it is a continuation of the prison term, albeit in  
15 an unsecured facility where the prisoner has the freedom under certain  
16 conditions to come and go from the facility. Jurisdiction is not  
17 transferred from BOP to probation at that time and supervised release  
18 does not begin then. Supervised release begins when the entire prison  
19 term is over, which occurs when a prisoner is released from the  
20 community correctional facility at the conclusion of his term.

21 B. The Petition Is Defective Because It Was Not Signed By Metoyer  
22 Under Oath

23 In 2004, the Ninth Circuit ruled in *United States v. Vargas-*  
24 *Amaya*, 389 F.3d 901 (9th Cir. 2004), that a probation officer seeking  
25 an arrest warrant for a supervised release violation must support his  
26 application by oath or affirmation. In doing so, the circuit set a  
27 new bar for proceeding against supervised releasees in revocation  
28 proceedings. The court held that a district court is without

1 jurisdiction to proceed in a supervised release revocation proceeding  
2 unless the warrant was issued "'upon probable cause, supported by Oath  
3 or affirmation' as required by the Fourth Amendment." *Id.* at 907.

4 The petition presented to the district court in this case is  
5 defective. It was prepared and presented by Probation Officer Gregory  
6 J. Metoyer, Defendant's probation officer, but Metoyer did not sign  
7 the petition under penalty of perjury. His supervisor signed the  
8 petition on Metoyer's behalf. Metoyer explained during the  
9 preliminary hearing that his office routinely obtains the warrants in  
10 this fashion, i.e., a supervisor signing the affirmation on behalf of  
11 the probation officer, because a supervisor is required to approve all  
12 requests for a warrant. The Court concludes that this practice does  
13 not comport with the Fourth Amendment. There is nothing before this  
14 Court to suggest that Metoyer's supervisor had knowledge of the facts  
15 he was attesting to on behalf of Metoyer in the petition. He was  
16 merely signing off on the petition for Metoyer. Nor, can Metoyer be  
17 held to answer for what is included in the petition because he never  
18 signed it. Thus, ultimately, in the Court's view, no one from  
19 probation has attested to the facts in the petition, which runs  
20 counter to the requirements of the Fourth Amendment and mandates  
21 dismissal under *Vargas-Amaya*.

22 The government cites the Court to *United States v. Jeremiah*, 493  
23 F.3d 1042 (9th Cir. 2007), in which the Ninth Circuit held in a  
24 supervised release case that, even where the probation officer failed  
25 to properly attest to the facts in the revocation petition, a releasee  
26 was not entitled to have his conviction for supervised release  
27 violations overturned on appeal. *Jeremiah* is not on point. First,  
28 the defendant in *Jeremiah* did not raise the issue until appeal. Thus,

1 he was already convicted of the violations. *Id.* at 1044-45. That is  
2 not the case here. Defendant has not even had a hearing on the merits  
3 of the petition, yet. Second, the circuit court noted in *Jeremiah*  
4 that, because the defendant had been arrested during the term of his  
5 supervised release, *Vargas-Amaya* did not apply. *Id.* at 1045.  
6 Defendant in the case at bar was arrested after the term of his  
7 supervised release had ended. Thus, even under *Jeremiah*, Defendant  
8 should prevail.

9 When all is said and done, it appears clear to the Court that the  
10 petition which led to the arrest warrant in this case was not executed  
11 properly because the probation officer who prepared it and purportedly  
12 attested to it did not sign it, his supervisor did. Further, there is  
13 no indication on the petition that the supervisor was attesting to the  
14 facts in the warrant. Under *Vargas-Amaya*, the warrant is, therefore,  
15 defective and the Court is without jurisdiction to proceed. *Vargas-*  
16 *Amaya*, 389 F.3d at 907.

17 C. The Government Is Not Entitled To Tolling

18 The government argues that Defendant had absconded from  
19 supervision and was, therefore, a fugitive during much of the final  
20 months of his supervision. It argues that, as early as November 2007,  
21 when he failed to report and failed to submit a monthly report, he was  
22 in fugitive status. It contends that, because Defendant was a  
23 fugitive, his period of supervised release was tolled and the  
24 government should now be able to file an amended petition that is  
25 properly attested to. For the following reasons, the Court disagrees.

26 Though Defendant failed to submit his monthly reports after  
27 October 2007, and failed to report for numerous dates between October  
28 2007 and January 2008, his behavior after October 2007 does not appear



1 to be any different than his behavior before then. Defendant was  
2 regularly failing to comply with the terms and conditions of his  
3 release, including failing to report as ordered. If his failures to  
4 comply trigger a tolling of the supervised release period, then the  
5 period never began to run because Defendant was never fully compliant.

6 The government's citations to *United States v. Murguia-Oliveros*,  
7 421 F.3d 951 (9th Cir. 2005), and *United States v. Bristow*, 2007 WL  
8 2345037 (S.D. Cal. 2007), does not compel a different result. In  
9 *Murguia-Oliveros*, the Ninth Circuit held that an illegal alien who was  
10 prohibited under the terms of his supervised release from returning to  
11 the United States and required to report to his probation officer in  
12 the event that he ignored that condition and returned anyway had  
13 absconded from supervision when he returned to the United States and  
14 failed to report to probation, even after receiving a letter from  
15 probation telling him to do so. *Murguia-Oliveros*, 421 F.3d at 952.  
16 The court concluded that, because the defendant had absconded, the  
17 supervised release term was tolled until the arrest warrant was  
18 issued. *Id.* at 954.

19 The situation in the case at bar is different. Though Defendant  
20 was non-compliant in that he failed to regularly report and otherwise  
21 follow instructions from his probation officer, he had contact with  
22 the probation officer as late as December 26, 2007, when he called the  
23 probation officer and told him why he had missed an appointment with  
24 the probation officer on that date. Further, it appears that  
25 Defendant's conduct in December 2007 was no different than his conduct  
26 throughout 2007. Sometimes Defendant responded to calls and letters  
27 from the probation office, and sometimes he did not. If his failure  
28 to comply with the directives of his probation officer triggers



1 tolling, his period of supervision should be tolled for most, if not  
2 all, of the supervision period because he failed to follow the rules  
3 and directives for most of the period. The Court chooses not to read  
4 *Murguia-Oliveros* so broadly. Where, as here, the supervised release  
5 violations occur throughout the period of supervision, the supervised  
6 release period is not tolled as a result of a releasee's violation of  
7 a term or condition of his release. Absent something more, like  
8 moving and not providing a forwarding address, or a complete and utter  
9 failure to respond to the probation officer's entreaties, the period  
10 of supervision is not tolled.

11 *Brisow*, too, does not require a different result. There, the  
12 releasee failed to comply with the terms and conditions of his release  
13 and an arrest warrant was issued for his arrest. *Bristow*, 2007 WL  
14 2345037, at \*1, \*4. The releasee was told by his probation officer  
15 that there was an outstanding warrant and that he should turn himself  
16 in. *Id.* at \*4. The releasee said that he would, but failed to report  
17 to his probation officer and stopped having contact with him. *Id.*  
18 The district court found that the releasee's failure to report to his  
19 probation officer rendered him a fugitive, tolling the period of his  
20 supervised release. *Id.*

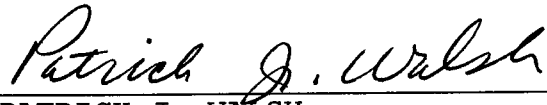
21 *Bristow* is not on point. The record in the case at bar is not  
22 complete as to what Defendant was doing in December 2007 and January  
23 2008. Defendant did have contact with his probation officer on  
24 December 26, 2007, at which time he was told to report the following  
25 day, and he failed to report the following day. Further, he did not  
26 submit a monthly report in January 2008. The government does not  
27 allege that he was told to report after December 27, 2007. The  
28 significance of this fact is that Defendant's conduct in December and

1 January was no different than it had been throughout the supervised  
2 release period. Defendant sometimes complied with the probation  
3 officer's orders and sometimes did not. His failure to comply in  
4 December 2007 and January 2008, therefore, should not trigger a  
5 different legal status, i.e., fugitive status, because the probation  
6 office determined in January 2008 that Defendant's conduct over the  
7 preceding 13 months warranted revocation.

8 Absent tolling of the supervised release period, the latest date  
9 the supervised release term expired in this case was January 26, 2008.  
10 Thus, the government can no longer submit a revocation petition to the  
11 Court. As such, the Court orders that Defendant be released from  
12 custody forthwith.<sup>2</sup>

13 IT IS SO ORDERED.

14 DATED: February 13, 2007.

15   
16 PATRICK J. WALSH  
17 UNITED STATES MAGISTRATE JUDGE  
18  
19  
20

21 S:\PJW\CRIMINAL\Campbell\Ord\_granting Ds MTD1.wpd  
22

23 <sup>2</sup> Though the Court had told the government at the hearing that  
24 it would stay this order to allow the government to appeal, government  
25 counsel has contacted the court clerk and informed her that the  
26 government has elected not to appeal. For that reason, the order will  
27 not be stayed. The Court commends the Assistant United States  
28 Attorney for his prompt decision regarding the appeal and his call to  
the clerk, which will allow Defendant to be released forthwith and not  
be required to stay in custody for a week while the decision was  
stayed, only to find out next week that the government was not going  
to appeal it.